

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,

Plaintiff

V.

AUDIBLE MAGIC CORPORATION

Defendant

Civil Action No. 6:15-CV-00584-RWS-CMC

AUDIBLE MAGIC CORPORATION,

Counterclaim Plaintiff

V.

BLUE SPIKE, LLC, BLUE SPIKE, INC.
and SCOTT A. MOSKOWITZ

Counterclaim Defendants

**AUDIBLE MAGIC CORPORATION'S SUPPLEMENTAL OPPOSITION TO THE
ELECTRONIC FRONTIER FOUNDATION'S MOTION TO UNSEAL COURT RECORDS**

Audible Magic filed a Response to the Electronic Frontier Foundation's ("EFF") Motion to Intervene and to Unseal. *See* Dkt. 97. In that Response, Audible Magic stated its position of no opposition to EFF's Motion. Subsequent to Audible Magic's initial response, EFF filed with the Court a Proposed Order. Audible Magic does not oppose filing redacted public versions of the Docket Entries set forth in EFF's Proposed Order. Audible Magic, however, disagrees with the procedure outlined in EFF's Proposed Order regarding previously-filed-under-seal documents and future documents under seal. Audible Magic opposes EFF's Motion to Unseal, to the extent EFF's Proposed Order is inconsistent with Audible Magic's proposed procedure outlined below.

EFF's Proposed Order would require that each of the Docket Entries in its Proposed Order be unsealed immediately at the time its motion is ruled upon unless "a party has shown good cause to seal certain information contained therein." *See* EFF Proposed Order. Audible Magic and Blue Spike followed the Local Rules for the Eastern District of Texas regarding filing documents under seal. The parties did so in order to protect their confidential information. Haphazardly unsealing entire documents without providing Audible Magic an opportunity to redact its confidential information would severely prejudice and cause substantial harm to its business. EFF has no basis to request immediate unsealing of documents properly filed with this Court, and it provides no process for the sealing of confidential materials. Its Proposed Order must, therefore, be rejected.

If the Court grants EFF's requested relief to unseal, Audible Magic proposes the following procedure to redact any documents previously-filed with the Court. Within 14 days of an Order requiring the parties to file redacted versions of the Docket Entries in EFF's Proposed Order, Audible Magic and Blue Spike will file with the Court proposed redacted versions of each document. Concurrently with these filings, each parties will submit a particularized showing regarding portions of the record (including portions of filed documents and certain exhibits) that it seeks to seal. These

redacted versions will become the publicly available documents that EFF's Motion requests access to, absent objection by the Court.

Audible Magic proposes the following procedure for documents to be filed under seal in the future. Documents containing the confidential business information of either party will be filed under seal with the clerk and maintained confidential. Within 14 days of any such filing, Audible Magic and Blue Spike will file a redacted version of the document filed under seal. Concurrent with *this* filing, each party wishing to maintain confidential information will submit a particularized showing regarding information in the filing that it seeks to maintain under seal.

Audible Magic's position represents a common sense and efficient approach to maintaining the parties' confidential business information, while at the same time providing the public access to information to which it is entitled. Accordingly, should the Court grant EFF's Motion to Unseal, the Court should reject EFF's Proposed Order and substitute an appropriate order that follows Audible Magic's proposal. Audible Magic submits a proposed order herewith.

Dated: May 2, 2016

By:

/s/ Eric H. Findlay

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served electronically on opposing counsel pursuant to Local Rule CV-5(a)(7)(C) on May 2, 2016.

/s/ Eric H. Findlay
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